

**MEXICO – ANTI-DUMPING INVESTIGATION OF HIGH FRUCTOSE CORN SYRUP
(HFCS) FROM THE UNITED STATES**

Recourse to Article 21.5 of the DSU by the United States

**Closing Statement of the United States
Meeting of the Panel
February 21, 2001**

1. Mr. Chairman and members of the Panel, we appreciate being able to present our arguments to you. We have some brief closing remarks.
2. With respect to our argument under Article 3.7(i), the discussion at this meeting confirms our position that SECOFI's redetermination provides no basis for its conclusion that there is a likelihood of substantially increased imports notwithstanding the restraint agreement. As we indicated in our Opening Statement, SECOFI's conclusions on likely HFCS purchases by users other than soft drink bottlers are based on conjecture.
3. We have discussed extensively with the Panel how the material in Mexico-20 and Mexico-21 does not support SECOFI's conclusions that non-soft drink bottlers are likely to increase their HFCS purchases by over 400 percent in the near future. Careful examination of this material indicates that SECOFI consistently used [] even when the rate was purely theoretical or was unsupported by evidence in SECOFI's administrative file concerning HFCS utilization in that industry sector. Additionally, SECOFI assumed that non-soft drink bottlers would purchase additional quantities of HFCS at levels that are completely inconsistent with available data concerning historical purchasing patterns for HFCS and sugar. These defects are particularly egregious with respect to [] which SECOFI projected would be responsible for the [] of additional HFCS purchases.
4. With respect to our argument under Article 3.4, SECOFI's projections on the likely levels of Mexican sugar sales, prices, and profitability are infected by its flawed conclusions regarding the likelihood of substantially increased HFCS imports. Moreover, SECOFI's models are based on assumptions that are not consistent with the facts, which demonstrate the absence of a correlation between HFCS imports and Mexican sugar prices and industry performance. In its redetermination, SECOFI did not explain why it was justified in relying on these models.
5. With respect to Articles 12.2 and 12.2.2, Mexico has failed to set forth in sufficient detail all relevant information on the matters of fact and law and the reasons which have led to the determination. The redetermination itself does not provide the required explanation. Moreover, the exhibits by which Mexico attempts to meet this obligation are deficient in

numerous respects and in any event do not provide the same information as the redetermination. The Panel's questions regarding SECOFI's approach to HFCS substitution for sugar and the likely financial impact of HFCS imports on the Mexican sugar industry – and Mexico's inability to respond effectively to these questions – highlight the fact that Mexico's exhibits do not explain the basis for SECOFI's conclusions.

6. Finally, we have several comments on the European Communities' arguments concerning consultations. First, the EC is a third party to this dispute. Its argument is not within the terms of reference, and is not a claim before the Panel. The EC is essentially asking for an advisory opinion, contrary to the DSU. Second, the EC's argument is based on an incorrect premise. In fact, third parties are not guaranteed a right to join consultations, as the EC itself demonstrated in the consultations prior to the FSC Article 21.5 proceeding, which the United States agreed to hold, although these were not required by Article 21.5. Therefore, there is no basis for claiming that the EC position is required to guarantee the rights of third parties. While the EC and the United States had a bilateral agreement allowing for third parties to ask to join the consultations, the EC in the end made its consultation request pursuant to GATT 1994 Article XXIII, thereby denying any possibility of third party participation. Third, in addition to disagreeing with the EC on the merits, we note that the Appellate Body in its FSC report indicated that proper consultations are not necessarily a bar to the "jurisdiction" of a panel. Finally, we note that parties can, and have, dispensed with consultations.
7. Thank you, Mr. Chairman and members of the Panel.